IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16100 of 2005
With
SPECIAL CIVIL APPLICATION No. 16101 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANJITSING JAGJITSING - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
Mr. A.J.Patel, with MR SHITAL R PATEL for the Petitioner.
MR SIRAJ GORI, AGP for the Respondents.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : / /2006

CAV JUDGMENT

Rule. Learned Assistant Government Pleader Mr. Siraj Gori, waives service of notice of Rule on behalf of

the respondents.

2. Special Application No.16100 of 2005 has been preferred against the order dated 27th July,2004 passed by the Deputy Collector, Viramgam Prant, Ahmedabad in Case No.1 of 2004 as well as against the order dated 4th June,2005 passed by Principal Secretary, Revenue Department (Appeals) in Revision Application No.9 of 2004 (Annexure “G” and “I” respectively to the memo of the petition).

2. Brief facts leading to the present appeal are as under:-

2.1 The petitioner of Special Civil Application No.16100 of 2005 has purchased the land bearing Survey No.420/3 of Village: Thaltej, Taluka: Dascroi, Ahmedabad admeasuring 0-17 gunthas from the power of attorney of Chimanbhai Keshavlal Patel by a registered sale deed. Mutation entry was also recorded in the revenue record bearing entry no.9098 dated 9/9/2003, which was certified on 16/10/2003 (Annexure “F” to the memo of the petition). Approximately after six months of receiving consideration and after mutation entry recorded in the revenue record and even after certification of this

entry, the very same owner namely Chimanbhai Keshavlal Patel preferred an application before the Deputy Collector, Viramgam Prant, Ahmedabad and pointed out that the land, which was sold by him to the petitioner was in breach of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act,1947 (hereinafter referred to as “the Act,1947”). Thereafter, the proceedings were initiated by the Deputy Collector and the same was set aside. Revision Application under section 35 of the Act,1947 was preferred by the petitioner before the Principal Secretary, Revenue Department (Appeals) but the same was also dismissed. It is also a matter of fact that there was a ready declaration of intention dated 11/8/2000 for Town Planning Scheme No.37, Thaltej. Even a draft town planning scheme was also prepared under the Town Planning and Urban Development Act,1976 (hereinafter referred to as “the Act,1976”) and the aforesaid Survey No.420/3 has been reconstituted. The redistribution and valuation statement is also on record at Annexure “E” to the memo of the petition. Final plots have also been given. Thus, the survey number has been converted into the final plots, as per Form “F”, as per Rule 21 & 35 of the Gujarat Town Planning and Urban Development Rules,1979. Thus, whole survey no.402/3 along with 402/4 and 402/5 has been converted into final plot no.95/2 and

the original area of survey no.5767 sq.metres is now reduced to 3461 sq.metres. The zoning Certificate, which is at Annexure “C” to the memo of the petition, reveals the fact that as per Ahmedabad Urban Development Authority, the land in question is in residential type “II” zone. Even as per zoning Certificate, the land ceases to be an agricultural land. The Certificate is dated 30/7/2005. Thus, the land was within the town planning scheme under the Town Planning Act. The same was a residential zone. The original survey number was converted into final plot number, and so it ceased to be an agricultural land.

2.2 I have heard the learned advocate Mr.A.J. Patel with Mr.Shittal Patel for the petitioners submitted that both the authorities below have not properly appreciated the fact that the land was not an agricultural land. The land was purchased by registered sale deed by the petitioner from the power of attorney holder of Chimanbhai Keshavlal Patel admeasuring 0-17 gunthas. Therefore, mutation entry no.9098 dated 9/9/2003 was entered into revenue records, which was also certified on 16/10/2003. The land was part and parcel of the town planning scheme. It is falling in the residential zone as per the Certificate issued by AUDA and thus, the application given by the very same

owner for setting aside the sale was nothing but an afterthought and in vindictive manner such application has been preferred by the seller himself and that too after lapse of several months from the registration of the sale deed and after the entry is certified by the Government in the revenue records. This aspect of the matter has not been appreciated by both the authorities below and, hence, the orders passed by both the authorities deserve to be quashed and set aside. It is also not appreciated by both the authorities that once the land is converted by town planning scheme area and is allotted final plots under redistribution as per Form “F” issued under Rule 21 and 35 of the Rules,1979, no notice can be issued by the Deputy Collector under the Act,1947. The whole logic advanced in para-2 of the order dated 4th June,2005 passed by the Principal Secretary, Revenue Departments (Appeals) in Revision Application, is totally a non-application of mind. It was apprehended by the Principal Secretary, Revenue Departments (Appeals) that if there are fragmentation of agricultural land, it will not be useful for agricultural operation. But the said authority has lost sight of the fact that the present sale deed of the land was already covered under the town planning scheme and even final plot numbers have been allotted as per Annexure “E” to the memo of the petition.

Moreover, the land is covered under the residential zone as per Certificate at Annexure “C” and, therefore, no question of doing any agricultural operation on the land in question whatsoever arises, especially keeping in mind the provisions of section 28 of the Act,1976. The petitioners cannot continue the use of the land, which is not in conformity with the development plan and such use will be unauthorized as per section 28 of the Act,1976. Thus, the land is falling in a residential zone and, therefore, agricultural operation cannot be performed. This aspect of the matter has not been appreciated by both the authorities below and, hence, the orders passed by both the authorities below deserve to be quashed and set aside.

2.3 It is submitted by the learned advocate for the petitioners that previously also, when Chimanbhai Keshavlal Patel, the predecessor-in-title purchased the land, similar type of notice was issued to Chimanbhai Keshavlal Patel under the Act,1976 and that notice was withdrawn vide order dated 7th March,1998 by Deputy Collector, Viramgam Prant, Ahmedabad vide order at Annexure “A” to the memo of the petition. Thus, the land, which was purchased by Chimanbhai Keshavlal Patel was dropped for violation of section 9 of the Act,1947. This

very land was purchased by the same petitioners and, therefore, once again for the very same land, second time a notice under Act,1947 cannot be issued. In view of this factual and legal position, the order dated 27th April,2005 passed by the Deputy Collector, Viramgam Prant, Ahmedabad as well as order passed by the Principal Secretary, Revenue Department (Appeals) in Revision Application No.9 of 2004 deserve to be quashed and set aside.

2.5 I have heard the learned Assistant Government Pleader for the State, who has mainly submitted that as per section 9 of the Act,1947, the sale transaction is void and therefore, mutation entry no.9098 dated 9/9/2003, which was certified on 16th October,2003 is not useful to the present petitioners. Basically the total sale transaction is violative of section 8 of the Fragmentation Act,1947. No permission has ever been taken by the petitioners nor by Chimanbhai Keshavlal Patel, the predecessor-in-title, who is the seller of the land and, therefore, the orders passed by both the authorities below are true, correct and in consonance with the facts of the present case.

3. Having heard the learned counsel for both the

sides and looking to the facts and circumstances of the case, order dated 27th July,2004 passed by the Deputy Collector, Viramgam Prant, Ahmedabad in Case No.1 of 2004 as well as against the order dated 4th June,2005 passed by Principal Secretary, Revenue Department (Appeals) in Revision Application No.9 of 2004 (Annexure “G” and “I” respectively to the memo of the petition), in my opinion, deserve to be quashed and set aside, for the following facts and reasons:-

(i) It is not appreciated by both the authorities below that land in question, which is a part and parcel of survey no.420/3 of Village: Thaltej, Taluka: Dascroi, Ahmedabad admeasuring 0.17 gunthas is converted into final plot numbers under the Act,1976. The whole survey nu.420/3 along with other two survey numbers,420/4 and 420/5 has been merged and is allotted final plot no.95/2. The original area admeasuring 5767 sq.metres has been reduced to 3461 sq.metres under the distribution and valuation statement as per Form “F” issued under rule 21 and 35 of the Rules,1979. Moreover, as per zoning Certificate issued by Area Development Authority under the Act,1976 (which is Ahmedabad Urban Development Authority, in the facts of the present case), the land in question is falling within residential zone. Thus, no

notice can be issued by the respondent authority under the Act,1947.

(ii) The land has been purchased by the petitioner from power of attorney holder of Chimanbhai Keshavlal Patel by a registered sale deed. The mutation entry no.9098 dated 9/9/2003 was also entered into the revenue records as per Annexure “F” to the memo of the petition. This mutation entry was also certified on 16/10/2003 as per the provisions of the Bombay Land Revenue Code. After 6 months thereof, the seller Chimanbhai Keshavlal Patel preferred an application wherein, vendor himself is challenging the sale of the land in question. This aspect of the matter has been discussed in the decision rendered by this court in the case of **State of Gujarat and others vs. Saurashtra Cement and Chemical Industries Ltd. reported in 2003(2) GLR 1266. Para-19** thereof reads as under:-

> *“19. Under these circumstances, in my view, proceedings are not required to be conducted at the instance of the respondent No.3. Even otherwise, the land in question is statued in T.P. Scheme, which is introduced and the same is now in residential zone. In that view of the matter, even rigour of Act, to an extent, is watered down. This being in residential zone in the Town Planning Scheme, the land can be converted into N.A. Use."*

As per provision of the Gujarat Town Planning and Urban Development Act,1976, especially as per section 28 read with sections 29,31, 33 and 35, if the holder of the land continues the use of the land in contravention with the development plan, it tantamounts to an act, which is saddled with a penalty. Such use, which is in contravention with the development plan, ought to be discontinued, in the facts of the present case, the survey no.420/3 is converted into final plots. Town Planning Scheme is applicable. The zoning is also changed and now, the land is falling within residential zone and, therefore also, the notice issued by the respondent authority under the Act,1947 deserves to be quashed and set aside and, consequently, both the orders also deserve to be quashed and set aside.

(iii) Keeping in mind, the notification dated 4/2/2003 issued by the Government under sections 41 and 42 of the Act,1976 (Annexure “D” to the memo of the petition), the land in question is meant for town planning development. The agricultural operation ought to be brought to an end especially when the land in question is falling within residential zone, as per notice issued at Annexure “G” to the memo of the petition and,

therefore also, the notice issued as well as both the impugned orders passed under the Act,1947 deserve to be quashed and set aside. Reasoning given in para-2 by the Principal Secretary (Appeals) in his order date 4th June,2005 in Revision Application (Annexure “I” to the memo of the petition), cannot be made applicable to the facts of the present case, especially when the land is covered under the town planning scheme and, when Form”F” is already issued under rule 21 and 35 of the Rules,1979.

4. As a cumulative effect of the aforesaid facts and reasons and the judicial pronouncements and legal provisions, the order dated 27th July,2004 passed by the Deputy Collector, Viramgam Prant, Ahmedabad in Case No.1 of 2004 as well as the order dated 4th June,2005 passed by Principal Secretary, Revenue Department (Appeals) in Revision Application No.9 of 2004 (Annexure “G” and “I” respectively to the memo of the petition) are hereby quashed and set aside. Rule made absolute with no order as to costs.

(D.N.PATEL,J)

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